REMARKS

In the Office Action dated October 31, 2005, claims 1-3 and 5-31 were presented for examination. Claims 1-3 and 5-31 were rejected under 35 U.S.C. §112, first paragraph, and claims 1, 15-17, 24-25, and 31 were rejected under 35 U.S.C. §102(b) as being anticipated by *Ho*, U.S. Patent No. 5,615,373. Claims 2, 3, 5-14, 18-23, and 26-30 were objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

I. Rejection of Claims 1-3 and 5-31 under 35 U.S.C. §112, first paragraph

In the Office Action dated October 31, 2005, the Examiner rejected claims 1-3 and 5-31 under 35 U.S.C. §112, first paragraph as failing to comply with the written description requirement. Applicant has amended claims 1, 17, and 24 to remove this language in view of alternative language that more clearly defines the invention over the prior art. The additional language presented in amended claims 1, 17, and 24 pertain to the process of releasing and switching locks based on the embodiments of the invention. Support for the amended language can be found on page 12, lines 15-19. In view of the current amendment to the claims and removal of the previously presented language, the rejection is moot. Accordingly, Applicant respectfully requests the Examiner to remove the rejection of claims 1-3 and 5-31 under 35 U.S.C. §112, first paragraph.

II. 35 U.S.C. §102(b) - Anticipation by *Ho*

Claims 1, 15-17, 24-25, and 31 were rejected under 35 U.S.C. §102(b) as being unpatentable over *Ho*, U.S. Patent No. 5,615,373.

Applicant's remarks pertaining to *Ho* presented in the Response to the prior Office Actions are hereby incorporated by reference.

As noted in the Response to the prior Office Actions, Applicant's invention pertains to selection of a lock based upon system-wide measurements of read and write acquisitions. The selection of the lock includes acquiring the lock, releasing the lock, and switching to a different lock. See page 12, lines 16-19. The processes of lock acquisition, release, and switch are in responsive to at least some of the system-wide measures of read and write acquisitions. In general, a lock for a limited or limited lifetime, as taught in *Ho*, is a fixed length time-out shared between a lease holder and a lease manager. The client receives a temporary privilege to read and cache a data object. When the time for the lease concludes, the temporary lock expires. *Ho* does expand on a lock for a limited lifetime by enabling release of the data lock prior to expiration of the assigned time on the lease. See Col. 7, lines 18-20. This modification of support for releasing a limited lifetime lock disclosed by *Ho* pertains to releasing a lock held by one client in response to a request to write data from another client or workstation in the system. See Fig. 4, step 112. However, there is no support in *Ho* for the client releasing the lock to switch to an alternate lock during the process of releasing the lock. Applicant's claimed invention provides that a lock is acquired by a processing unit, released, and the processing unit switches to a different lock in response a change in at least some of the system measures. Claims are interpreted in view of the accompanying specification. There is no support in *Ho* for using the system measures to switch locks of a processing unit based upon a change in some of the first and second system-wide measures. Accordingly, *Ho* does not teach Applicant's claimed limitations of switching among locks.

In order for the claimed invention to be anticipated under 35 U.S.C. §102(b), the prior art must teach all claimed limitations presented by the claimed invention. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." MPEP §2131 (citing *Verdegaal Bros. v. Union Oil Co. of California*, 814 F. 2d 628, 631, 2 U.S.P.Q. 2d 1051, 1053 (Fed. Cir. 1987)). As mentioned above, *Ho* does not show all of the elements as claimed by Applicant in pending claims 1-3 and 5-31. Specifically, *Ho* does not show a method or system for a single processing unit switching locks in response to a change in system measures. Rather *Ho* shows a lock lifetime, *i.e.* a lease,

that may be released by a client in response to a write request by another client in the system. The release of the lock of *Ho* entails release of a lock by one processing unit and acquisition of the lock by a second processing unit. *Ho* does not show the client, *i.e.* the processing unit, that releases the lease switches to an alternate lock - it merely shows release of the lock. Accordingly, *Ho* clearly fails to teach the limitations pertaining to the selection of a lock, as defined and presented by Applicant in amended claims 1-3 and 5-31.

"[A] previous patent anticipates a purported invention only where, except for insubstantial differences, it contains *all* of the same elements operating in the same fashion to perform an identical function." *Saunders v. Air-Flo Co.*, 646 F.2d 1201, 1203 (7th Cir. 1981) citing *Popeil Brothers, Inc. v. Schick Electric, Inc.*, 494 F. 2d 162, 164 (7th Cir. 1974) (holding patents were not invalid as being anticipated by or obvious in light of prior art) *(emphasis added)*. *Ho* does not anticipate the invention of Applicant based upon the legal definition of anticipation. Although the prior art cited by the Examiner relates to processors and locks associated therewith, *Ho* fails to show each and every element as presented in Applicant's claimed invention, and more specifically for a processing unit to switch locks in response to a change in some system-wide measures. Rather, *Ho* only shows one client releasing a lock in response to another client requesting and acquiring the lock. Accordingly, Applicant respectfully contends that *Ho* does not meet the standards set by the CAFC's interpretation of 35 U.S.C. §102(b), and respectfully requests allowance of claims 1-3 and 5-31.

Applicant believes that a full and complete reply has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. Accordingly, Applicant requests that the Examiner indicate allowability of claims 1-3 and 5-31, and that the application pass to issue. If the Examiner believes, for any reason, that personal communication will expedite prosecution of the application, the Examiner is hereby invited to telephone the undersigned at the number provided.

For the reasons outlined above, withdrawal of the rejection of record and an allowance of this application are respectfully requested.

Respectfully submitted,

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